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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

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SC Court of Appeals

DeShields Grading, Inc.,

Respondent,

v.

Ford Trust; Maurice Andre Smith and Perry
S. Luthi, Sr. as co-trustees of Ford Trust,
dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust; Investments One, LLC; Reserve @
Woodfin HOA; and Elite Concrete
Construction, LLC,

Defendants,

Of whom Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust is

Appellant.

SUPPLEMENT TO
RECORD ON APPEAL

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INDEX

1. DeShields Grading, Inc. Complaint 2011-CP-42-00135 2

2. DeShields Grading, Inc. Pre-Hearing Brief, April 15, 2011 12

3. Order of Reference, March 15, 2011 21

4. Order, Hon. J. Mark Hayes, February 8, 2011 24

2. On December 31, 2009, Reserve @ Woodfin HOA received a judgment against Judgment Debtor and that such Judgment is recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2009-CP-42-06976. *See Exhibit B: Judgment Roll No. 2009-CP-42-06976.*

3. Upon information and belief, Butler, Means, Evins, & Browne, P.A. has a judgment against either Judgment Debtor, Ford Trust, or Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010.

4. Upon information and belief, DeShields, Elite, Reserve @ Woodfin HOA, and Butler, Means, Evins, & Browne, P.A. (collectively hereinafter "Judgment Creditors") all have unsatisfied judgments against Judgment Debtor.

5. On February 2, 2010, Citizens Building and Loan Association a/k/a Citizens Building and Loan Association of Greer, SC conveyed certain real property located in Spartanburg County at 504 Chattooga Road, Roebuck, South Carolina (hereinafter "Subject Property") to Barry A. Tweed, both non-parties. The deed to Tweed was filed for record in the Register of Deeds Office for Spartanburg County on February 3, 2010 at Deed Book 95-M at Page 803. *See Exhibit C: Deed to Barry A. Tweed.*

6. On February 11, 2010, Tweed conveyed the Subject Property to Judgment Debtor. The deed to Judgment Debtor was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Deed Book 95-P at Page 287. *See Exhibit D: Deed to Investments One, LLC.* Pursuant to the deed to Judgment Debtor, the Subject Property was conveyed to Judgment Debtor for the nominal amount of

of Ten and 0/100ths Dollars (\$10.00), but had a money's worth transaction value of One Hundred Forty-Five Thousand and 0/100ths Dollars (\$145,000.00). *See Exhibit D.*

7. Therewith, Judgment Debtor gave MCN Enterprises, LLC (hereinafter "MCN") a purchase money mortgage in the principal amount of One Hundred Forty-Five Thousand and 0/100ths Dollars (\$145,000.00). The mortgage given to MCN was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4322 at Page 147. *See Exhibit E: Mortgage given MCN Enterprises, LLC.*

8. Upon Tweed's conveyance of the Subject Property to Judgment Debtor on February 12, 2010, Judgment Creditors' judgments, totaling One Hundred Twenty-Eight Thousand, Seven Hundred Twenty-One and 44/100ths Dollars (\$128,721.44), plus interest, attached to the Subject Property.

9. On May 12, 2010, Judgment Debtor conveyed the Subject Property to Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010 and/or the Ford Trust itself (collectively "Record Owner"). The deed to Record Owner was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:51:57 PM at Deed Book 96-7 at Page 709. *See Exhibit F: Deed to Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010.*

10. Upon information and belief, Maurice Andre Smith (hereinafter "Smith") is both a co-trustee of the Record Owner, owner of the Subject Property, and a principal of Judgment Debtor, the conveyer of the Subject Property to Record Owner.

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11. Therewith the conveyance of the Subject Property to Record Owner, on May 12, 2010, Record Owner gave Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust (hereinafter "Mortgagee") a purchase money mortgage (hereinafter "Mortgage") in the principal amount of One Hundred Seventy-One Thousand, Six Hundred Twenty-Six and 90/100ths Dollars (\$171,626.90). The mortgage given to Mortgagee was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:52:31 PM at Mortgage Book 4348 at Page 439. ***See Exhibit G: Mortgage given Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust.***

12. Upon information and belief, Perry S. Luthi, Sr. is both a co-trustee of the Record Owner, owner of the Subject Property, and a principal of Mortgagee, the mortgage holder on the Subject Property

13. Additionally therewith, on May 12, 2010, subordination of judgments were filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4348 at Page 446 and Page 447 purporting to subordinate DeShields and Elite's judgments, respectively, in favor of a mortgage given by Record Owner to Mortgagee in the principal amount of One Hundred Seventy-One Thousand, Six Hundred Twenty-Six and 90/100ths Dollars (\$171,626.90). ***See Exhibit II: DeShields and Elite Subordination Agreements.***

14. The subordination of judgment filed on behalf of DeShields was fraudulently manufactured, executed, witnessed, acknowledged and filed. ***See Verified Complaint.***

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15. Upon information and belief, the subordination of judgment filed on behalf of Elite was also fraudulently manufactured, executed, witnessed, acknowledged and filed.

16. Upon information and belief, Peggy D. Taylor (hereinafter "Taylor"), a notary for the State of South Carolina, fraudulently acknowledged the execution and witnessing of the subordination of judgments.

17. Upon further information and belief, Smith had the subordination of judgments fraudulently manufactured, executed, witnessed, acknowledged and filed then conveyed the Subject Property and encumbered it with the Mortgage in an effort to defeat Judgment Debtors' judgment creditors.

18. Upon information and belief, Smith knew the subordinations of judgment were fraudulent when they conveyed the Subject Property and encumbered it with the Mortgage.

19. Upon information and belief, since the subordination of judgments filed on behalf of DeShields and Elite were fraudulent, DeShields and Elite have priority against any and all subsequent encumbrances, including the Mortgage.

20. On or about December 2010, Steven A. and Vicky McLain entered into an agreement with Record Owner to purchase the Subject Property for Two Hundred Thirty-Three Thousand and 0/100ths Dollars (\$233,000.00). *See Exhibit I: Steven A. and Vicky McLain's Settlement Statement.*

21. Jurisdiction and venue are proper in the Court.

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23. DeShields brings this action for declaratory judgment pursuant to the “Uniform Declaratory Judgments Act”, *South Carolina Code Ann.* § 15-53-10, eg seq. and Rule 57 of the *South Carolina Rules of Civil Procedure*.

24. DeShields asks this Court to determine the respective priorities of the Judgment Creditors and Mortgagee’s interest in the Subject Property and/or priorities to the proceeds from any sale thereof and determine that DeShields and Elite, jointly, being the first judgment creditors, have first priority.

25. DeShields further asks that this Court order a speedy hearing, pursuant to Rule 57 of the South Carolina Rules of Civil Procedure.

**FOR A THIRD CAUSE OF ACTION
(Interpleader)**

26. DeShields realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

27. DeShields brings this action based on its good faith concern in the proceeds from any sale of the Subject Property being disbursed to the wrong party and to shield all parties and agents of any type thereof, including closing agents, from liability in the disbursement of proceeds to the wrong party and from any adverse claims that may arise there from.

28. Pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*, DeShields respectfully asks that this Court cause the proceeds of any sale of the Subject Property, less the transactional costs, to be deposited into this Court until a further order of judgment of this Court with respect to the subject matter of this controversy and the priority to those monies.

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29. DeShields further seeks that all parties and agents of any type thereof, including closing agents, be discharged from any and all liability as to any adverse claims that may arise as to the subject matter of this controversy and the priority to those monies.

**FOR A FOURTH CAUSE OF ACTION
(Conspiracy – Smith, Taylor)**

30. DeShields realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

31. Smith and/or Taylor fraudulently and deceptively executed the subordination of judgment on the behalf of DeShields or, in the alternative, had the subordination of judgment on the behalf of DeShields fraudulently and deceptively executed.

32. Smith and/or Taylor made a representation that DeShields authorized and executed the subordination of judgments.

33. Taylor, in conjunction with Smith, fraudulently and deceptively acknowledged the execution of the subordination of judgment on the behalf of DeShields.

34. As a result of Smith and/or Taylor's fraudulent and deceptive execution, and/or acknowledgment, Smith, as principal for Judgment Debtor and co-trustee Record Owner, conveyed the property from Judgment Debtor to Record Owner.

35. Smith and/or Taylor either knew that the subordination of judgment was false or had reckless disregard for its truth or falsity.

36. Smith and/or Taylor intended that the execution and representation be acted on.


37. As a direct and proximate result of Smith and Taylor's conspiracy, DeShields has been injured and is entitled to a judgment against Smith and Taylor.

WHEREFORE, the plaintiff, DeShields Grading Inc., respectfully prays for the following relief:

- (a) For a speedy hearing, pursuant to Rule 57 of the *South Carolina Rules of Civil Procedure*;
- (b) Satisfaction of that certain mortgage held by Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust, filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:52:31 PM at Mortgage Book 4348 at Page 439, and all other liens and encumbrances held by any party as to the Subject Property, so that the Subject Property can be sold;
- (c) Cause the proceeds of any sale of the Subject Property, less the transactional costs, to be deposited into this Court, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*;
- (d) For a judgment declaring that DeShields Grading Inc. and Elite Concrete Construction, I.I.C., jointly, have a first priority interest in the Subject Property, first priority to the proceeds from any sale thereof and/or first priority to the monies deposited with this Court;
- (e) Disbursement of the monies deposited with this Court as determined by an Order of Judgment in this case;
- (f) For a judgment against Defendant Maurice Andre Smith, Individually and Defendant Peggy D. Taylor; Individually, plus attorneys' fee, interest and costs;
- (g) For attorneys' fees and costs; and
- (h) For such other and further relief that this Court deems just and proper.

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Respectfully submitted this 15th day of Jan-, 2011,



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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	
DeShields Grading Inc.,)	C. A. No.: 2011-CP-42-135
)	
Plaintiff,)	
)	
v.)	
)	PRE HEARING BRIEF
Ford Trust; Maurice Andre Smith and)	
Perry S. Luthi, Sr., as co-trustees of Ford)	
Trust dated April 8, 2010; Maurice)	
Andre Smith, Individually; Peggy D.)	
Taylor; Individually; Luthi Mortgage)	
Co., Inc. d/b/a First Palmetto Trust;)	
Investments One, LLC; Reserve @)	
Woodfin HOA; and Elite Concrete)	
Construction, LLC,)	
)	
Defendants.)	
)	

This brief is hereby submitted in support of Plaintiff DeShields Grading Inc. (hereinafter “DeShields”)’s priority to the monies interpled with this Honorable Court on or around February 18, 2011.

SUMMARY OF THE ARGUMENT

Pursuant to *South Carolina Code Ann.* § 30-7-10, priority in South Carolina is determined by the time of filing for record. DeShields and Elite Concrete Construction, LLC (hereinafter “Elite”), being first in time through their September 30, 2009 judgments, are first in right to the interpled monies; ahead of Defendant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust (hereinafter “Mortgagee”)’s May 12, 2010 mortgage interest; ahead of Defendant Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010 (hereinafter “Mortgagor”)’s May 12, 2010 fee simple interest; and ahead of Defendant Reserve @ Woodfin HOA’s December 31, 2009 judgment.

Mortgagee is not entitled to special priority over DeShields and Elite through its purported purchase money mortgage as neither DeShields nor Elite's claims arose through Mortgagee; arising through Defendant Investments One, LLC instead. Moreover, as a result of Mortgagee and Mortgagee's agency relationship with Defendant Maurice Andre Smith, Individually (hereinafter "Smith"), they are imputed with the constructive knowledge of the fraudulent subordination of judgments Smith filed purporting to subordinate DeShields and Elite's judgments in favor of Mortgagee's mortgage and, for that reason, are not equitably entitled to priority over DeShields or Elite.

STATEMENT OF FACTS

Smith is the principal of Defendant Investments One, LLC (hereinafter "Judgment Debtor"), a real estate development company. On September 30, 2009, DeShields and Elite received judgments against Judgment Debtor in the amounts of Nine-Eight Thousand, Seven Hundred Fifty-Seven and 75/100ths Dollars (\$98,757.75) and Twenty-Four Thousand, Seven Hundred Fifteen and 25/100ths Dollars (\$24,715.25), respectively, and such judgments are recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2008-CP-42-03281. On December 31, 2009, Defendant Reserve @ Woodfin HOA received a judgment against Judgment Debtor and that such Judgment is recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2009-CP-42-06976. Canopy Hardwood Flooring holds a judgment against Smith, individually.

On February 11, 2010, Judgment Debtor acquired from non-party Barry A. Tweed certain real property located in Spartanburg County at 504 Chattooga Road, Roebuck, South Carolina (hereinafter "Subject Property"). The deed to Judgment Debtor was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Deed Book 95-P at

Page 287. Therewith, Judgment Debtor gave MCN Enterprises, LLC a purchase money mortgage in the principal amount of One Hundred Forty-Five Thousand and 0/100ths Dollars (\$145,000.00). The mortgage given to MCN Enterprises, LLC was filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4322 at Page 147 and satisfied of record on July 1, 2010 record at Mortgage Book 4364 at Page 590.

On May 12, 2010, Judgment Debtor, through its principal Smith, conveyed the Subject Property to Mortgagor¹. The deed to Mortgagor was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:51:57 PM at Deed Book 96-P at Page 709. Simultaneously with the conveyance of the Subject Property to Mortgagor, Mortgagor gave Mortgagee² a purchase money mortgage (hereinafter “the Mortgage”) in the principal amount of One Hundred Seventy-One Thousand, Six Hundred Twenty-Six and 90/100ths Dollars (\$171,626.90). The Mortgage was filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:52:31 PM at Mortgage Book 4348 at Page 439.

Additionally therewith, on May 12, 2010, subordination of judgments were filed for record in the Register of Deeds Office for Spartanburg County on February 12, 2010 at Mortgage Book 4348 at Page 446 and Page 447 purporting to subordinate DeShields and Elite’s judgments, respectively (collectively hereinafter “the Subordination of Judgments”), in favor of The Mortgage. The Subordination of Judgments were fraudulently manufactured, executed, witnessed, acknowledged and filed by and through Smith, the principal of Judgment Debtor and co-trustee of Mortgagor.

On February 17, 2011, pursuant to this Court’s February 8, 2011 Order, Mortgagor conveyed the Subject Property to Steven A. McLain and Vicky McLain. The deed to the

¹ Smith, along with being the principal of Judgment Debtor, is also the co-trustee of Mortgagor.

² Perry S. Luthi, Sr., along with being a co-trustee of Mortgagor, is also the principle of Mortgagee.

McLains was filed for record in the Register of Deeds Office for Spartanburg County on February 18, 2011 at 10:48:44 AM at Deed Book 97-W at Page 586. Pursuant to this Court's February 8, 2011 Order and Rule 22 of the *South Carolina Rules of Civil Procedure*, the proceeds from the sale, less the authorized transactional costs, in amount of Two Hundred Four Thousand, One Hundred Sixty Two and 98/100ths Dollars (\$204,162.98) were deposited into this Court (hereinafter "Interpled Monies").

ARGUMENT

In the matter at hand, DeShields and Elite are entitled to priority to the Interpled Monies. On September 30, 2009, DeShields and Elite received judgments against Judgment Debtor (Defendant Investments One, LLC) and such judgments were recorded in the Office of the Clerk of Court for Spartanburg County as Judgment Roll No. 2008-CP-42-03281. Pursuant to *South Carolina Code Ann.* § 15-35-810, therefore, on September 30, 2009, DeShields and Elite's judgments created a lien upon the real estate of Judgment Debtor in Spartanburg County for a period of ten years. *See South Carolina Code Ann.* § 15-35-810. Accordingly, when Judgment Debtor acquired the Subject Property on February 12, 2010, DeShields and Elite's judgments attached to the Subject Property that same day. Moreover, since the Subordination of Judgments filed on May 12, 2010 were fraudulent, and therefore void, DeShields and Elite's judgments remained the first encumbrance against the Subject Property.

Similarly to DeShields and Elite's judgments, the Reserve @ Woodfin HOA's December 31, 2009 judgment against Judgment Debtor attached to the Subject Property upon Judgment Debtor's acquisition of the Subject Property on February 12, 2010. Mortgagor (Defendant Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010) and Mortgagee (Defendant Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust)'s interests in the

Subject Property, on the other hand, did not arise until Judgment Debtor's conveyance of the Subject Property to Mortgagor and Mortgagor's giving the Mortgage to Mortgagee on May 12, 2010.

Pursuant to *South Carolina Code Ann.* § 30-7-10, priority in South Carolina is determined by the time of filing for record. *See South Carolina Code Ann.* § 30-7-10. Accordingly, DeShields and Elite, being first in time, are also first in right to the Interpled Monies. This analysis does not change with Mortgagee's contention that it holds a purchase money mortgage. Moreover, Mortgagor and Mortgagee, imputed with constructive knowledge of the fraudulent nature of the Subordination of Judgments, are also not equitably entitled to priority.

I. MORTGAGEE NOT ENTITLED TO PURCHASE MONEY MORTGAGE PRIORITY OVER DESHIELDS AND ELITE

Mortgagee contends it is entitled to priority over all other creditors as a result of having a purchase money mortgage interest in the Subject Property. Purchase money mortgages are recognized at common law and in equity and occur when a purchaser of land executes a mortgage to secure the purchase money contemporaneous with its acquisition of the legal title or afterward as a part of the same transaction." *See e.g. Hursey v. Hursey*, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct.App.1985). Purchase money mortgages are "accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage." *Id.* "The rationale for this special priority is that the mortgagor's interest in the property is made possible by the purchase money loan, so that the mortgage should come ahead of other interests that attach merely because the mortgagor acquires the property." *South Carolina Federal Sav. Bank v. San-A-Bel Corp.*, 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct.App.1992). Moreover, Courts have also cited that "[t]he reason most frequently advanced

for the rule giving preference to purchase-money mortgages over outstanding interests acquired through the mortgagor is that the execution of the deed and the mortgage are simultaneous acts, so that no claim or lien arising through the mortgagor can attach before the mortgage." *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496, 498 (1979) citing 55 *Am. Jur. 2d, Mortgages*, s 349, p. 409.

In the matter at hand, Mortgagee is not entitled to this special priority over DeShields and Elite for two reasons. First purchase money mortgages are "accorded priority over all other claims or liens *arising through the mortgagor* although they are prior in time to the execution of the purchase money mortgage." *Hursey*, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct.App.1985) (*emphasis added*). The mortgagor under the Mortgage was Mortgagor, Defendant Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010. Mortgagee's special priority, therefore, if Mortgagee is found to have a purchase money mortgage, is over all claims or liens arising through Mortgagor. *Id. and See Crystal Ice Co. of Columbia, Inc.* 273 S.C. 306, 257 S.E.2d 496, 498 (1979).

DeShields and Elite's judgments, however, are against Judgment Debtor, the conveyor of the Subject Property to Mortgagor, not Mortgagor itself. Pursuant to *Hursey and Crystal Ice Co. of Columbia, Inc.*, therefore, Mortgagee would not have special priority over DeShields and Elite. Moreover, since DeShields and Elite's judgments are against Judgment Debtor, their interests in the property were not made possible by Mortgagee's loan to Mortgagor and Mortgagor's acquisition of the Subject Property. Pursuant to *South Carolina Federal Sav. Bank v. San-A-Bel Corp.*, therefore, there is no rationale for Mortgagee to have special priority over DeShields and Elite. *See South Carolina Federal Sav. Bank*, 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct.App.1992).

Secondly, since Perry S. Luthi is both the co-trustee of Mortgagor and the principal of Mortgagee, Mortgagor's interest in the Subject Property was not made possible by Mortgagee's purchase money loan. Instead, the entities were used simply as a protective device against other potential creditors. Similar to above, therefore, the rationale for Mortgagee to have special priority over DeShields and Elite is not present. *Id.*

II. MORTGAGEE AND MORTGAGOR NOT ENTITLED TO EQUITABLE PRIORITY OVER DESHIELDS AND ELITE

In addition to Mortgagee not being entitled to a special priority over DeShields and Elite as a result of its purported purchase money mortgage, Mortgagor and Mortgagee are also not equitably entitled to priority as a result of their imputed knowledge of the fraudulent nature of the Subordination of Judgments as a result of their agent, Defendant Maurice Andre Smith. As stated in *Crystal Ice Co. of Columbia, Inc.*:

“The relation of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. The law creates the relationship of principal and agent if the parties, in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency.”

Crystal Ice Co. of Columbia, Inc., 273 S.C. 306, 257 S.E.2d 496, 497 (1979) citing 2A C.J.S. Agency s 52, p. 623, accord, *City of Greenville v. Washington American L. B. Club*, 205 S.C. 495, 32 S.E.2d 777 (1945); *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.C.S.C.1966).

“It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority.” *Id.* citing 3 *Am.Jur.2d, Agency*, s 273, et seq.; 3 *C.J.S. Agency* s 432, et seq.; *American Freehold Land Mortgage Co. v. Felder*, 44 S.C. 478, 22 S.E. 598 (1895); *Hill v. Carolina Power & Light*

Co., 204 S.C. 83, 28 S.E.2d 545 (1943). “An equally well-recognized exception to this general rule exists in situations where the agent is acting fraudulently against his principal or for any other reason has an interest in concealing his acquired knowledge from his principal.” *Id.* at 498 citing 3 *Am.Jur.2d, Agency*, s 282; 3 *C.J.S. Agency* s 434. “However, the view has been expressed that an agent's fraud cannot alter the effect of his knowledge to his principal with respect to third persons who had no connection with the fraud.” *Id.* at 498 citing *Restatement, Agency* (2d Ed.), s 271; 3 *Am.Jur.2d, Agency*, s 282.

In the matter at hand, the Subordination of Judgments were fraudulently manufactured, executed, witnessed, acknowledged and filed by and through Smith, co-trustee of Mortgagor along with Perry S. Luthi, the principal of Mortgagee. Pursuant to *Crystal Ice Co. of Columbia, Inc.*, Smith, as a co-trustee of Mortgagor, was an agent for Perry S. Luthi, Mortgagor and Mortgagee. *Id.* at 497. Accordingly, Smith's knowledge of the perpetrated fraud was imputed by law to Perry S. Luthi, Mortgagor and Mortgagee with respect to third persons who had no connection with the fraud. *Id.* at 498. Therefore, regardless of Smith's concealment of his fraud and acquired knowledge from Perry S. Luthi, Mortgagor, and Mortgagee, neither Mortgagor nor Mortgagee can alter the effect of their constructive knowledge with respect to DeShields and Elite. *Id.* Accordingly, Mortgagor and Mortgagee took their interests in the Subject Property subject to DeShields and Elite's judgments against Judgment Debtor which had previously attached to the Subject Property.

CONCLUSION

For the foregoing reasons, DeShields and Elite are entitled to the monies interpleaded into this Court on around February 18, 2011 pursuant to the Court's February 8, 2011 Order.

Respectfully submitted this 15th day of April 2011,



John T. Crawford, Jr. (SC Bar# 69682)
Keven Kenison (SC Bar # 66068)
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844
Attorneys for Plaintiffs

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 DeShields Grading Inc.,)
 Plaintiff)
)
 v.)
)
 Ford Trust; Et Al)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
 2011-CP-42-135

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Townes Johnson, Bar No. 75412 Address: 704 E. McBee Ave. Greenville, SC 29601 phone: (864)242-4899 fax: (864)242-4844 e-mail: johnson@conlaw.com other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

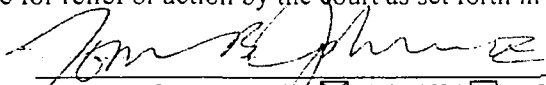
SECTION I: Hearing Information

Nature of Motion: Motion for Order of Reference
 Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

3/14/2011

Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 M. HOPE BLACKLEY
 2011 MAR 14 AM 11:22

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF SPARTANBURG)

SEVENTH JUDICIAL CIRCUIT)

DeShields Grading Inc.,)

C. A. No. 2011-CP-42-00135)

Plaintiff,)

v.)

ORDER OF REFERENCE

Ford Trust; Maurice Andre Smith and)
Perry S. Luthi, Sr., as co-trustees of Ford)
Trust dated April 8, 2010; Maurice)
Andre Smith, Individually; Peggy D.)
Taylor; Individually; Luthi Mortgage)
Co., Inc. d/b/a First Palmetto Trust;)
Investments One, LLC; Reserve @)
Woodfin HOA; Butler, Means, Evins, &)
Browne, P.A.; and Elite Concrete)
Construction, LLC,)

Defendants.)

FILED
COURT
CLERK
SPARTANBURG COUNTY
2011 MAR 15 AM 11:10
M. HOPE BLACKLEY

It appearing that, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the parties consent to this matter being referred to the Master-In-Equity.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the civil action identified as 2011-CP-42-135, *DeShields Grading Inc. v. Ford Trust; Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010; Maurice Andre Smith, Individually; Peggy D. Taylor; Individually; Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust; Investments One, LLC; Reserve @ Woodfin HOA; Butler, Means, Evins, & Browne, P.A.; and Elite Concrete Construction, LLC*, be and the same is hereby referred to the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, to take testimony and evidence regarding all claims and counterclaims asserted in this action and to make findings of fact and conclusions of law regarding all such claims and counterclaims, with authority to enter final judgment pursuant to Rule 53(e) SCRCF, with any appeal being directly to the Supreme Court.

M. Hope Blackley
PRESIDING JUDGE, 7th JUDICIAL CIRCUIT
clerk of court Pat Detantes

Dated: 3/15/11
Spartanburg, SC

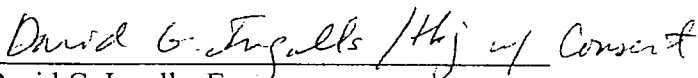
FEE PAID

WE SO MOVE:

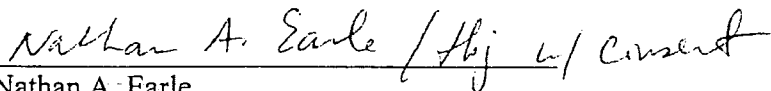


John T. Crawford, Jr. (SC Bar# 69682)
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844
Attorneys for Plaintiff

WE SO CONSENT:



David G. Ingalls, Esq.
P.O. Box 2196
Spartanburg, SC 29304
(864) 573-5149
(864) 585-2744 (fax)
Attorney for Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust
and the Ford Trust



Nathan A. Earle
Attorney at Law
819 E. North St.
Greenville, SC 29601
(864) 331-3044
(864) 242-5500 (fax)
Attorney for Elite Concrete Construction, LLC

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2011 MAR 15 AM 11:10

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

) SEVENTH JUDICIAL CIRCUIT

DeShields Grading Inc.,

) C. A. No. 2011-CP-42- 0135

) Plaintiff,

) v.

ORDER

) Ford Trust; Maurice Andre Smith and
) Perry S. Luthi, Sr., as co-trustees of Ford
) Trust dated April 8, 2010; Maurice
) Andre Smith, Individually; Peggy D.
) Taylor; Individually; Luthi Mortgage
) Co., Inc. d/b/a First Palmetto Trust;
) Investments One, LLC; Reserve @
) Woodfin HOA; Butler, Means, Evins, &
) Browne, P.A.; and Elite Concrete
) Construction, LLC,

) Defendants.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB -8 PM 2:27
M. HOPE BLACKLEY

This matter came before the Court on DeShields Grading Inc. ("DeShields")'s Motion for a Temporary Restraining Order and Preliminary Injunction against Defendants. By stipulation and consent of the interested parties, this Court finds as follows:

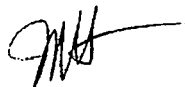
1) Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010 ("Record Owner") are the record owners of that certain real property located in Spartanburg County at 504 Chattooga Road, Roebuck, South Carolina ("Subject Property");

2) Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust ("First Palmetto") has a loan secured by a mortgage on the Subject Property filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at Mortgage Book 4348 at Page 439.

3) DeShields, Elite Concrete Construction, LLC, Reserve @ Woodfin HOA, and Canopy Hardwood Flooring (collectively hereinafter "Judgment Creditors") may all have liens or encumbrances against the Subject Property;

4) An actual controversy has arisen and exists between Judgment Creditors and First Palmetto regarding their respective priority to the proceeds from the Subject Property;

5) Steven A. and Vicky McLain (collectively hereinafter "McLains") have entered into a contract with Record Owner to purchase the Subject Property;



6) Record Owner, First Palmetto, and Judgment Creditors all desire that the Subject Property be sold to the McLains pursuant to their agreement with Record Owner, or any other purchaser for value;

7) Record Owner, First Palmetto, and Judgment Creditors all stipulate by consent that the proceeds of any sale of the Subject Property, less the transactional costs as authorized by the Court in a subsequent Order, shall be deposited into this Court, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*, for a determination of the foregoing parties' priority to same;

8) Record Owner, First Palmetto, and Judgment Creditors all stipulate by consent that with the deposit of the foregoing proceeds into this Court, each release any and all claims it may have against the subject property, the Purchaser, closing attorney and any company insuring title to the transaction;

IT IS THEREFORE ORDERED that in conjunction with the sale and closing of the Subject Property, that certain mortgage held by Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust, filed for record in the Register of Deeds Office for Spartanburg County on May 12, 2010 at 2:52:31 PM at Mortgage Book 4348 at Page 439, is hereby satisfied and the Register of Deeds Office for Spartanburg County is hereby directed to cancel said mortgage;

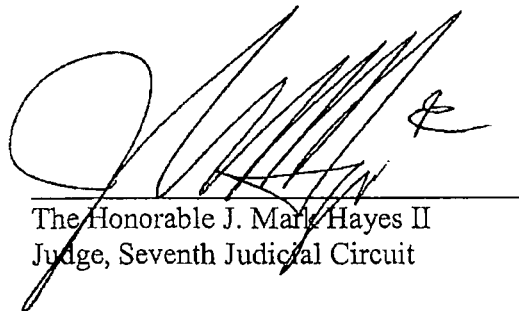
IT IS FURTHER ORDERED that in conjunction with the sale and closing of the Subject Property, the Subject Property is released from any and all liens and encumbrances held by Judgment Creditors;

IT IS FURTHER ORDERED that in conjunction with the sale and closing of the Subject Property, the Subject Property is released from any and all other liens and encumbrances not mentioned herein;

IT IS FURTHER ORDERED that the proceeds of any sale of the Subject Property, less the transactional costs as authorized by the Court in a subsequent Order, are deposited into this Court, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*, for a determination of the foregoing party's priority to same and an Order disbursing same;

IT IS FURTHER ORDERED that, since its need is moot, the security DeShields' deposited with this Court, pursuant to Rule 65(c) of the *South Carolina Rules of Civil Procedure*, in the amount of Six Hundred Sixty-Two and 70/100 Dollars (\$662.70), is hereby disbursed back to DeShields.

IT IS SO ORDERED.

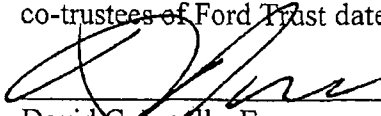

The Honorable J. Mark Hayes II
Judge, Seventh Judicial Circuit

Spartanburg, South Carolina
This 8 day of ~~January~~ February 2011.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 8 PM 5:17
M. HOPPE-BLACKBURN

WE SO STIPULATE AND CONSENT:

Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010


David G. Ingalls, Esq., *counsel for Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010*

Dated: _____

Reserve @ Woodfin HOA

By: _____

Print: _____
Its: _____

By: _____, *counsel for Reserve @ Woodfin HOA*

Dated: _____

Elite Concrete Construction, LLC

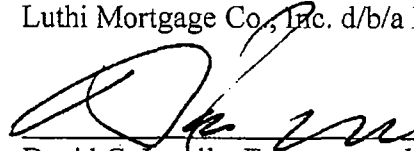
By: _____

Print: _____
Its: _____

Nathan A. Earle, Esq., *counsel for Elite Concrete Construction, LLC*

Dated: _____

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust


David G. Ingalls, Esq., *counsel for Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust*

Dated: _____

Canopy Hardwood Flooring


By: _____

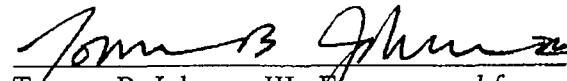
Print: _____
Its: _____

By: _____, *counsel for Canopy Hardwood Flooring*

Dated: _____

DeShields Grading Inc.,

By: 
Print: Carol F. DeShields
Its: *President*


Townes B. Johnson III., Esq., *counsel for DeShields Grading Inc.*

Dated: 2/8/11

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB - 8 PM 2:27
M. HOPE BLACKLEY

WE SO STIPULATE AND CONSENT:

Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010

By: _____
Print: _____
Its: _____

David G. Ingalls, Esq., *counsel for Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010*

Dated: _____

Reserve @ Woodfin HOA

By: _____
Print: _____
Its: _____

By: _____, *counsel for Reserve @ Woodfin HOA*

Dated: _____

Elite Concrete Construction, LLC

By: _____
Print: _____
Its: _____

Nathan A. Earle, Esq., *counsel for Elite Concrete Construction, LLC*

Dated: _____

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust

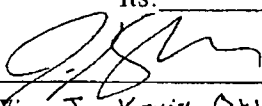
By: _____
Print: _____
Its: _____

David G. Ingalls, Esq., *counsel for Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust*

Dated: _____

Canopy Hardwood Flooring

By: _____
Print: _____
Its: _____

By:  J. Kevin Owens, *counsel for Canopy Hardwood Flooring*

Dated: 2/4/11

DeShields Grading Inc.,

By: _____
Print: _____
Its: _____

John T. Crawford, Jr., Esq., *counsel for DeShields Grading Inc.*

Dated: _____

FILED
CLERK OF COURT
PARTISBURG COUNTY
FEB - 8 PM 2:27
M. HOPE BLACKLEY

WE SO STIPULATE AND CONSENT:

Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010

By: _____

Print: _____

Its: _____

David G. Ingalls, Esq., counsel for Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010

Dated: _____

Reserve @ Woodfin HOA

By: Barbara Ann Light

Print: BARBARA ANN LIGHT

Its: [Signature]

By: _____, counsel for Reserve @ Woodfin HOA

Dated: 2/4/11

Elite Concrete Construction, LLC

By: _____

Print: _____

Its: _____

Nathan A. Earle, Esq., counsel for Elite Concrete Construction, LLC

Dated: _____

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust

By: _____

Print: _____

Its: _____

David G. Ingalls, Esq., counsel for Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust

Dated: _____

Canopy Hardwood Flooring

By: _____

Print: _____

Its: _____

By: J. Kevin Owens, counsel for Canopy Hardwood Flooring

Dated: 2/4/11

DeShields Grading Inc.,

By: _____

Print: _____

Its: _____

John T. Crawford, Jr., Esq., counsel for DeShields Grading Inc.

Dated: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB - 8 AM 2:27
M. HOPE B. CROCKLEY

WE SO STIPULATE AND CONSENT:

Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010

By: _____

Print: _____

Its: _____

David G. Ingalls, Esq., counsel for Maurice Andre Smith and Perry S. Luthi, Sr., as co-trustees of Ford Trust dated April 8, 2010

Dated: _____

Reserve @ Woodfin HOA

By: _____

Print: _____

Its: _____

By: _____, counsel for Reserve @ Woodfin HOA

Dated: _____

Elite Concrete Construction, LLC

By: [Signature]

Print: Charles J. Loucks III

Its: owner/manager

[Signature]
Nathan A. Earle, Esq., counsel for Elite Concrete Construction, LLC

Dated: 2-2-11

Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust

By: _____

Print: _____

Its: _____

David G. Ingalls, Esq., counsel for Luthi Mortgage Co., Inc. d/b/a First Palmetto Trust

Dated: _____

Canopy Hardwood Flooring

By: _____

Print: _____

Its: _____

By: _____, counsel for Canopy Hardwood Flooring

Dated: _____

DeShields Grading Inc.,

By: _____

Print: _____

Its: _____

John T. Crawford, Jr., Esq., counsel for DeShields Grading Inc.

Dated: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB -8 PM 2:27
M. HOPE BLANCHARD

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

RECEIVED
DEC 01 2011
SC Court of Appeals

DeShields Grading, Inc.,.....Respondent,

v.

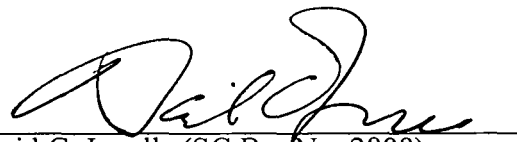
Ford Trust; Maurice Andre Smith and Perry
S. Luthi, Sr. as co-trustees of Ford Trust,
dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust; Investments One, LLC; Reserve @
Woodfin HOA; and Elite Concrete
Construction, LLC.....Defendants,

Of whom Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust is.....Appellant.

PROOF OF SERVICE

I, David G. Ingalls, do hereby certify that on the 30th day of November, 2011, the Supplement to Record on Appeal in the above-captioned case has been duly served on the Respondent, by placing the same in an envelope, with adequate prepaid postage affixed thereto, addressed to the attorney of record as listed below, and depositing a copy of same in the United States Mail.

John T. Crawford, Jr., Esq.
Townes Johnson, III, Esq.
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899
Attorney for Respondent



David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Gordon G. Cooper, Master-in-Equity

Case No. 2011-CP-42-00135

RECEIVED

DEC 01 2011

SC Court of Appeals

DeShields Grading, Inc.,

Respondent,

v.

Ford Trust; Maurice Andre Smith and Perry
S. Luthi, Sr. as co-trustees of Ford Trust,
dated April 8, 2010; Maurice Andre Smith,
Individually; Peggy D. Taylor, Individually;
Luthi Mortgage Co., Inc. d/b/a First Palmetto
Trust; Investments One, LLC; Reserve @
Woodfin HOA; and Elite Concrete
Construction, LLC,

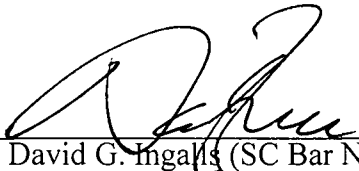
Defendants,

Of whom Luthi Mortgage Co., Inc. d/b/a
First Palmetto Trust is

Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that this Supplement to Record on Appeal complies with Rule 212, SCACR.


David G. Ingalls (SC Bar No. 2888)
Paul A. McKee, III (SC Bar No. 77926)
409 Magnolia Street
Spartanburg, SC 29303
Telephone: (864)573-5149
Facsimile: (864)948-1403

ATTORNEYS FOR APPELLANT